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How the Tenth Circuit's Ruling in *Martinez v. Beggs* Affects the Deliberate Indifference Standard for Eighth Amendment Claims

I. INTRODUCTION

In *Martinez v. Beggs*,¹ the Tenth Circuit held that prison officials were not liable under Section 1983² for a detainee's death. Because the prison officials were not "deliberately indifferent to the *specific risk*" of the harm, which in this case was a heart attack that led to the detainee's death,³ the court reasoned that the prison officials were not liable under Section 1983 for violating the detainee's Eighth Amendment rights.⁴

The Tenth Circuit's holding, however, that a prison official must be deliberately indifferent toward the *specific risk* faced by detainees changes the deliberate indifference standard for Eighth Amendment claims set by the Supreme Court in *Farmer v. Brennan*.⁵ In *Farmer*, the Court did not require knowledge of the specific risk, and instead, only required that the official must be "aware of facts from which the

1. 563 F.3d 1082 (10th Cir. 2009).

2. Section 1983 is "meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." *Monroe v. Pape*, 365 U.S. 167, 172 (1961). Section 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983 (2006).

3. *Martinez*, 563 F.3d at 1089.

4. The plaintiff, who was the deceased's daughter, brought this claim under the Fourteenth Amendment. *Id.* at 1084. However, "[u]nder the Fourteenth Amendment's Due Process Clause, pretrial detainees are entitled to the same degree of protection against denial of medical care as that afforded to convicted inmates under the Eighth Amendment." *Frohman v. Wayne*, 958 F.2d 1024, 1028 (10th Cir. 1992) (citing *Martin v. Bd. of County Comm'rs*, 909 F.2d 401, 406 (10th Cir. 1990)). The Eighth Amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. A standard for violations of a detainee's Eighth Amendment right against cruel and unusual punishment is an official's "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *see infra* Part II.A.

5. 511 U.S. 825 (1994).

inference could be drawn that a substantial risk of serious harm exists.”⁶ Additionally, the holding in *Martinez* disregards prior Tenth Circuit precedent, conflicts with other circuit court holdings, and unreasonably requires that all prison officials be sufficiently knowledgeable to understand a detainee’s specific medical risks.

Understanding how the Tenth Circuit’s decision in *Martinez* disregards prior Tenth Circuit precedent and unreasonably changes the deliberate indifference standard requires reviewing the facts and reasoning in *Martinez* and the Supreme Court’s precedent concerning pretrial detainee’s Eighth Amendment rights. Specifically, Part II of this article discusses the relevant Supreme Court precedent, Part III provides the facts and holding in *Martinez*, and Part IV analyzes the court’s holding.

II. THE DELIBERATE INDIFFERENCE STANDARD IN *ESTELLE V.*

GAMBLE AND FARMER V. BRENNAN

Two Supreme Court cases set the standard for violating a pretrial detainee’s Eighth Amendment rights. First, in *Estelle v. Gamble*, the Court held that deliberate indifference to a prisoner’s serious medical needs constitutes the “unnecessary and wanton infliction of pain” proscribed by the Eighth Amendment.⁷ Second, in *Farmer v. Brennan*, the Court defined deliberate indifference as disregarding a substantial risk by a prison official if the official was “aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists,” and if the prison official actually made this inference.⁸

A. The Facts and Holding in Estelle v. Gamble

J. W. Gamble, a Texas Department of Correction’s inmate, was significantly injured when a 600-pound bale of cotton fell on him

6. *Id.* at 837.

7. *Estelle*, 429 U.S. at 104; *see* *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (holding that unnecessary and wanton inflictions of pain violate the Eighth Amendment’s prohibition against cruel and unusual punishments). In cases dealing with pretrial detainees such as *Martinez*, the Fourteenth Amendment provides the same standard of care as the Eighth Amendment’s prohibition against cruel and unusual punishments. *See supra* note 4.

8. *Farmer*, 511 U.S. at 837.

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while performing a work assignment.⁹ Because of the accident, Gamble suffered intense pain and lower back strain.¹⁰

A doctor gave Gamble pain relievers, muscle relaxants, and a work pass that relieved the inmate of his work duties.¹¹ Nearly three weeks later, the doctor took away Gamble's pass and cleared Gamble for light work.¹² However, Gamble refused to work, stating that he was still in too much pain.¹³ Because of his refusal to work, Gamble was moved to administrative segregation and was permitted to see another doctor.¹⁴ The new doctor prescribed more pain medication and some high blood pressure medication.¹⁵

After a few more weeks, and after Gamble still refused to work, the prison disciplinary committee placed Gamble in solitary confinement.¹⁶ While there, Gamble asked to see a doctor for chest pains and "blank outs."¹⁷ About twelve hours later, Gamble saw a medical assistant who ordered him hospitalized.¹⁸ At the hospital, on the following day, a doctor prescribed medication for irregular cardiac rhythm.¹⁹

Two days later, Gamble again asked to see a doctor for chest pains and pain in his left arm and back;²⁰ however, the guards refused. On the next day, Gamble again asked to see a doctor, but again, the guards denied his request.²¹ Finally, on the third day of asking to see a doctor, the guards allowed Gamble to see a doctor.²²

Gamble filed a complaint against various prison officials alleging that they violated his Eighth Amendment right against cruel and unusual punishment.²³ The district court dismissed the case, but the

9. *Estelle*, 429 U.S. at 99.

10. *Id.*

11. *Id.*

12. *Id.* at 100.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 101.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* Although Gamble's "24-page handwritten complaint" focused on the "failure to provide medical care needed," *Gamble v. Estelle*, 516 F.2d 937, 938 (5th Cir. 1975), the Supreme Court stated that "[t]he gravamen of [Gamble's] § 1983 complaint is that petitioners

Fifth Circuit reversed and remanded.²⁴ On certiorari, the Supreme Court held that a deliberate indifference to a prisoner's serious medical needs constitutes cruel and unusual punishment and remanded the case back to the Fifth Circuit.²⁵

The Supreme Court reasoned that historically cruel and unusual punishments were limited to "physically barbarous punishments"²⁶ but that in today's society, cruel and unusual punishments are "punishments incompatible with 'the evolving standards of decency,'"²⁷ or which "involve the unnecessary and wanton infliction of pain."²⁸

The Court reasoned that modern standards "establish the . . . obligation to provide medical care for those whom it is punishing by incarceration."²⁹ Therefore, a deliberate indifference to a prisoner's serious medical needs offends the Eighth Amendment's evolving standard of decency³⁰ and constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.³¹

B. The Facts and Holding in Farmer v. Brennan

Dee Farmer was a male-to-female transsexual serving a federal sentence for credit card fraud.³² Prison officials initially housed Farmer with the general male population, but subsequently moved Farmer to a higher-security prison.³³ At the higher-security prison,

have subjected him to cruel and unusual punishment in violation of the Eighth Amendment." *Estelle*, 429 U.S. at 101.

24. *Gamble*, 516 F.2d at 941.

25. *Estelle*, 429 U.S. at 108, *remanded to* 554 F.2d 653 (5th Cir. 1977).

26. *Id.* at 102.

27. *Id.* (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

28. *Id.* at 103 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)).

29. *Id.* The Court went on to say that "[t]he infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common law view that . . . 'the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.'" *Id.* at 103–04 (citations omitted).

30. *Id.* at 106.

31. *Id.* at 105.

32. *Farmer v. Brennan*, 511 U.S. 825, 829 (1994). Farmer wore women's clothing and had previously undergone estrogen therapy, breast-implant surgery, and testicle-removal surgery. *Id.*

33. *Id.* at 830.

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another inmate, who was HIV positive and who shared Farmer's cell, beat and raped Farmer.³⁴

Farmer, acting pro se, filed a Bivens complaint³⁵ alleging that federal officials acted deliberately indifferent to Farmer's safety by housing him with historically violent inmates where he would be vulnerable to sexual attack.³⁶ Farmer alleged that this violated his Eighth Amendment rights.³⁷

The district court ruled against Farmer, reasoning that the defendants were not deliberately indifferent to Farmer's safety because, in part, Farmer never outwardly expressed any safety concerns.³⁸ Thus, the defendants could not be deliberately indifferent to Farmer's safety since they were not aware of the risk.³⁹ Farmer appealed, but the Seventh Circuit affirmed the district court's ruling without opinion.⁴⁰

The Supreme Court granted certiorari to clarify the deliberate indifference standard laid out in *Estelle*.⁴¹ The Supreme Court reasoned that Eighth Amendment liability requires more than ordinary negligence for the prisoner's safety and that Eighth Amendment liability lays "somewhere between the poles of negligence at one end and purpose or knowledge at the other."⁴²

Therefore, the Court held that a prison official cannot be liable under the deliberate indifference standard unless the "official knows of and disregards an excessive risk to inmate health or safety."⁴³ Further, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm

34. *Id.* at 830, 851.

35. A Bivens complaint is an action against federal agents for constitutional violations. See generally *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

36. *Farmer*, 511 U.S. at 830–31.

37. *Id.*

38. *Id.* at 831–32.

39. *Id.*

40. *Id.* at 832.

41. *Id.* at 828–29, 832.

42. *Id.* at 836. See generally *Crawford-El v. Britton*, 523 U.S. 574, 611 (1998) (Scalia, J., dissenting) (illustrating the concern that § 1983 litigation too closely parallels general tort law: Modern § 1983 precedent has changed § 1983 from a "statute that had generated only 21 cases in the first 50 years of its existence into one that pours into the federal courts tens of thousands of suits each year, and engages this Court in a losing struggle to prevent the Constitution from degenerating into a general tort law").

43. *Farmer*, 511 U.S. at 837.

exists, and he must also draw the inference.”⁴⁴ This standard, the Court reasoned, is subjective and similar to the criminal law recklessness standard, which is a “familiar and workable standard that is consistent with the Cruel and Unusual Punishments Clause . . . under the Eighth Amendment.”⁴⁵

The Court reasoned, however, that “[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence,” and that “a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.”⁴⁶ The Court reached this conclusion by reasoning that the Eighth Amendment is about protecting prisoners from substantial risks and that “it would obviously be irrelevant to liability that the officials could not guess beforehand precisely who would attack whom.”⁴⁷

III. THE FACTS AND HOLDING IN *MARTINEZ V. BEGGS*

On May 2, 2006, three Oklahoma police officers, responding to a “fight in progress” call,⁴⁸ observed Kenneth Ginn sitting on a porch.⁴⁹ An officer approached Ginn and asked if he needed medical attention. Ginn responded by saying he was “alright.”⁵⁰ However, the officer noticed that Ginn’s “speech was slurred, his eyes were bloodshot, and he smelled of alcohol.”⁵¹ Ginn admitted he had been drinking, and a by-stander told the officers that Ginn “had drunk an entire bottle of whiskey,” “seemed to be hallucinating,” and was looking for a fight.⁵² One of the officers offered to take Ginn home,

44. *Id.*

45. *Id.* at 839–40.

46. *Id.* at 842. The Court also stated that if the “defendant-official being sued had been exposed to information concerning the risk and thus ‘must have known’ about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk.” *Id.* at 842–43.

47. *Id.* at 843–44. The Court also reasoned that a “prison official [may not] escape liability for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the *specific* prisoner who eventually committed the assault.” *Id.* at 843 (emphasis added).

48. *Martinez v. Beggs*, 563 F.3d 1082, 1085 (10th Cir. 2009).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

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but “Ginn replied that he did not want to go home and . . . threatened to fight the officers.”⁵³

The officers arrested Ginn for public intoxication and took him to the detention center.⁵⁴ “Video surveillance from the detention center shows [the officers] escorting Ginn down the hallway toward the receiving cell,” because he “could not walk in a straight line.”⁵⁵

That evening, the officers at the detention center “were responsible for conducting sight checks” on Ginn at least every thirty minutes;⁵⁶ however, “no one logged in a sight check of Ginn” until about three hours after he arrived at the detention center.⁵⁷ When an officer finally checked on him, he found “Ginn dead, with his body in a kneeling position.”⁵⁸ A medical examiner stated that Ginn died of a heart attack, and a medical expert declared that he died because of heart disease compounded by his toxic blood-alcohol level.⁵⁹

A. Procedural History

Following his death, Ginn’s daughter, Ginger Martinez, individually and on behalf of Ginn’s estate, filed a § 1983 action against the county board of commissioners, the local sheriff, and the officers at the detention center.⁶⁰ Martinez’s action alleged Fourteenth Amendment violations⁶¹ for deliberate indifference to Ginn’s medical needs.⁶²

The district court granted summary judgment in favor of the defendants based on qualified immunity.⁶³ The court reasoned, in

53. *Id.*

54. *Id.* at 1085–86.

55. *Id.* at 1086.

56. *Id.* The detention center manual states:

Any inmate who is charged with being under the influence of alcohol or drugs or who has alcohol on his breath at the time of booking should be considered as a possible alcoholic. Inmates requiring detoxification or booked on drug charges will be placed in a holding cell for 4 to 6 hours or until sober and observed a minimum of every 30 minutes

Id.

57. *Id.* at 1087.

58. *Id.*

59. *Id.*

60. *Id.* at 1084.

61. *See supra* note 4.

62. *Martinez*, 563 F.3d at 1084.

63. *Martinez v. Beggs*, No. CIV-07-132-F, 2008 WL 200261, at *12 (W.D. Okla. Jan. 24, 2008).

part, that Martinez failed to show that the defendants violated the deliberate indifference standard and that the government officials performing discretionary functions are entitled to qualified immunity as long as their conduct does not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.”⁶⁴

Martinez appealed the district court’s ruling that summary judgment was appropriate in this case. On appeal, Martinez argued that “[t]here are genuine issues of material fact as to whether the Defendants were entitled to qualified immunity and whether they were deliberately indifferent” to Ginn’s serious medical needs.⁶⁵

B. The Court’s Holding

The Tenth Circuit rejected Martinez’s arguments and affirmed the district court’s ruling that the defendants were entitled to qualified immunity.⁶⁶ The court held that the defendants did not violate Ginn’s constitutional rights, and therefore, the defendants could not be liable as a matter of law.⁶⁷ To reach this holding, the Tenth Circuit reasoned that the test for the Eighth Amendment’s deliberate indifference standard is both objective and subjective and that Martinez failed to prove the subjective part of the test.⁶⁸

The court held that the ultimate harm to Ginn—his heart attack and his death—met the objective component, which is satisfied if the “‘harm suffered rises to a level ‘sufficiently serious’ to be cognizable under the Cruel and Unusual Punishment Clause’ of the Eighth Amendment.”⁶⁹ The court, however, held that Martinez failed to meet the subjective part of the test because Martinez did not show that the defendants knew Ginn faced the substantial risk of heart attack and death and they disregarded that risk.⁷⁰ The Tenth Circuit stated that Martinez was required to show that “defendants were

64. *Id.* at *6 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

65. Brief of Plaintiff-Appellant at 1, *Martinez v. Beggs*, No. 08-6042 (10th Cir. June 9, 2008), 2008 WL 2513979, at *1.

66. *Martinez*, 563 F.3d at 1084.

67. *Id.* at 1092.

68. *Id.* at 1088–90.

69. *Id.* at 1088 (quoting *Mata v. Saiz*, 427 F.3d 745, 752–53 (10th Cir. 2005)).

70. *Id.* at 1090.

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deliberately indifferent to the *specific risk*” of heart attack and death, and “not merely to the risk of intoxication.”⁷¹

In holding that defendants must be subjectively aware of a specific risk, the Tenth Circuit acknowledged the *Farmer* rule that a “factfinder may conclude that a prison official subjectively knew of the substantial risk of harm by circumstantial evidence” by “the very fact that the risk was obvious.”⁷² However, the court reasoned that “an obvious risk cannot conclusively establish an inference that the official subjectively knew of the substantial risk of harm because ‘a prison official may show that the obvious escaped him.’”⁷³

IV. THE TENTH CIRCUIT’S HOLDING IN *MARTINEZ V. BEGGS*
DISREGARDS PRECEDENT, CHANGES THE DELIBERATE
INDIFFERENCE STANDARD, AND UNREASONABLY REQUIRES
KNOWLEDGE OF SPECIFIC RISKS

The Tenth Circuit’s holding in *Martinez* improperly disregards prior Tenth Circuit precedent, namely *Estate of Hocker v. Walsh*⁷⁴ and *Garcia v. Salt Lake County*,⁷⁵ and conflicts with other circuit court holdings, which simply require that the official be “aware of facts from which the inference could be drawn that a substantial risk of serious harm exists.”⁷⁶ In addition, the holding changes the deliberate indifference standard set forth in *Farmer* by unreasonably requiring that prison officials be sufficiently knowledgeable to understand a detainee’s specific medical situation.

A. *The Tenth Circuit in Martinez v. Beggs Disregards Its Own Holdings in Estate of Hocker v. Walsh and Garcia v. Salt Lake County*

In *Martinez*, the Tenth Circuit, by quoting *Estate of Hocker*, held that the defendants must be deliberately indifferent to specific risks.⁷⁷ In *Estate of Hocker*, an intoxicated inmate hung herself after

71. *Id.* at 1089–90 (citing *Estate of Hocker v. Walsh*, 22 F.3d 995, 1000 (10th Cir. 1994)).

72. *Id.* at 1089 (quoting *Farmer v. Brennan*, 511 U.S. 825, 842 (1994)).

73. *Id.*

74. 22 F.3d at 1000.

75. 768 F.2d 303 (10th Cir. 1985).

76. *Farmer*, 511 U.S. at 837.

77. *Martinez*, 563 F.3d at 1089; *see supra* note 71 and accompanying text.

spending two days in a detention center. The deceased-inmate's estate sued the county and the sheriff, alleging that the "detention center's policy of admitting intoxicated and unconscious individuals showed deliberate indifference."⁷⁸

The Tenth Circuit held that "to establish deliberate indifference to an inmate's safety the plaintiff must show . . . 'actual knowledge of the specific risk of harm [to the detainee] . . . or that the risk was so substantial or pervasive that knowledge can be inferred.'"⁷⁹ The court reasoned that "no facts suggest that the Detention Center staff had knowledge of the specific risk that [the inmate] would commit suicide. Nor do the facts suggest that [the inmate's] risk of suicide was so substantial or pervasive that knowledge can be inferred."⁸⁰

However, the court in *Martinez* disregarded the "or" in *Estate of Hocker*'s holding, which establishes deliberate indifference if, in part, an official has knowledge of a specific risk *or* if the risk was so substantial or pervasive that the official has inferred knowledge.⁸¹ Instead, the court in *Martinez* simply held that the "defendants *must* . . . disregard"⁸² the specific risks and that inferring knowledge of a risk, because the risk is obvious, cannot conclusively prove subjective knowledge.⁸³ By disregarding the "or," and thereby effectively disregarding the possibility of inferring knowledge of obvious risks, the Tenth Circuit in *Martinez* changed the deliberate indifference standard set forth in *Farmer* and disregarded the holding in *Estate of Hocker*.

In addition to disregarding the holding in *Estate of Hocker*, the Tenth Circuit also improperly disregarded the holding in *Garcia v. Salt Lake County*.⁸⁴ In *Garcia*, officers arrested Garcia for drunk driving.⁸⁵ However, because Garcia complained of severe pain, an ambulance took him to the hospital.⁸⁶ At the hospital, Garcia secretly

78. *Martinez*, 563 F.3d at 1089; *Estate of Hocker v. Walsh*, 22 F.3d 995, 997 (10th Cir. 1994).

79. *Estate of Hocker*, 22 F.3d at 1000 (quoting *Berry v. City of Muskogee*, 900 F.2d 1489, 1498 (10th Cir. 1990)).

80. *Id.*

81. *See Martinez*, 563 F.3d at 1089.

82. *Id.* at 1089–90 (emphasis added).

83. *Id.* at 1089; *see supra* text accompanying notes 71–73.

84. 768 F.2d 303 (10th Cir. 1985).

85. *Id.* at 305.

86. *Id.*

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ingested barbiturates⁸⁷ and escaped.⁸⁸ Police officers found Garcia passed out near a hospital entrance and, after a doctor determined that he was semi-conscious, took him to jail.⁸⁹

At 3:43 p.m., Garcia arrived at jail, where the jail medic instructed officers to check on Garcia every fifteen to twenty minutes.⁹⁰ The jail officers checked on Garcia every thirty minutes, and at about 8:30 p.m., the medic found Garcia unconscious but left him in his cell.⁹¹ At about 10:15 p.m. Garcia appeared to be dead and was transported to the hospital where he eventually died.⁹² A medical expert stated, “Garcia would have survived the alcohol and barbiturate overdose . . . if he had been transported to the hospital when observed at 8:30 p.m. . . . and found to be unconscious.”⁹³

The Tenth Circuit in *Garcia* found for the plaintiffs, holding that “the county policy of admitting unconscious persons into the jail and the jail’s medical staffing deficiencies” constituted deliberate indifference, which violated Garcia’s constitutional rights.⁹⁴ The Tenth Circuit reached this holding even though the jail officers and jail medic did not specifically know that Garcia ingested barbiturates.

The court in *Martinez* refused to follow *Garcia*’s holding and distinguished *Garcia* on the facts. The court stated, “Although defendants in *Garcia* were aware that Garcia was unconscious for many hours, they took no action to attend to his obvious medical needs. By comparison, [in *Martinez*,] Ginn was conscious, on his feet, argumentative, and cognizant that he was being arrested.”⁹⁵ Further, the court noted that in *Martinez*, Ginn “showed no obvious symptoms indicating a risk of serious harm” and exhibited no “symptoms that would predict his imminent heart attack or death.”⁹⁶

87. *Id.* Two days before Garcia’s arrest, Garcia had urinary-tract surgery. *Id.* After this surgery, doctors prescribed these barbiturates to Garcia. *Id.* The medical staff involved with Garcia after his arrest did not know Garcia had these barbiturates in his possession. *Id.*

88. *Id.* at 305.

89. *Id.*

90. *Id.*

91. *Id.* at 305–06.

92. *Id.* at 306. Garcia was taken to the hospital on December 29, 1977. *Id.* At the hospital, doctors placed Garcia on life support but discontinued the life support on January 12, 1978. *Id.*

93. *Id.*

94. *Martinez v. Beggs*, 563 F.3d 1082, 1091 (10th Cir. 2009); *Garcia*, 768 F.2d at 308.

95. *Martinez*, 563 F.3d at 1091.

96. *Id.*

This factual distinction, however, was flawed: the court compared Garcia's time in jail, while Garcia was unconscious and checked on every thirty minutes by officers, to Ginn's conscious state before Ginn was arrested. Because the officers did not check on Ginn during the three hours he was in his cell,⁹⁷ it is possible that he was unconscious, as was Garcia. Thus, the officers simply shielded themselves from knowing Ginn's *specific risks* by not checking on him. The Tenth Circuit's holding in *Martinez*, therefore, not only disregards the court's holding in *Garcia* by wrongly distinguishing *Garcia* on the facts, but also subsequently encourages ignorance by prison officials.

*B. Requiring Knowledge of Specific Risk Conflicts with the
Holdings of Other Circuit Courts*

By requiring prison officials to know of the specific risk faced by a particular inmate, the Tenth Circuit's holding conflicts with every other circuit court except for the Fourth Circuit's holding in *Johnson v. Quinones*. In *Johnson v. Quinones*, an inmate alleged that prison doctors were deliberately indifferent because the doctors failed to diagnose a pituitary tumor that eventually caused the inmate to lose his sight.⁹⁸ The Fourth Circuit held that the prison doctors must understand the specific risk of harm facing an inmate by actually connecting the inmate's symptoms to a specific medical condition, which in this case was a pituitary tumor.⁹⁹ The court reasoned that a "general knowledge of facts creating a substantial risk of harm is not enough."¹⁰⁰

The Fourth Circuit's standard, and the Tenth Circuit's holding in *Martinez*, however, conflict with every other circuit court, which only require that an official know of and disregard an excessive risk to inmate health or safety.¹⁰¹ In addition, the Third, Fifth, Seventh,

97. See *supra* notes 56–59 and accompanying text.

98. 145 F.3d 164, 165–66 (4th Cir. 1998).

99. *Id.* at 168.

100. *Id.* By holding this way, the Fourth Circuit did not clarify whether this standard applies only to doctors and other medical personnel. It is highly problematic and unreasonable to require that non-medical personnel, such as the prison guards in *Martinez*, have sufficient medical knowledge to understand the specific medical risks faced by inmates. See *infra* Part IV.D.

101. See *Dale v. Poston*, 548 F.3d 563, 569 (7th Cir. 2008); *Phillips v. Roane County, Tenn.*, 534 F.3d 531, 540–41 (6th Cir. 2008); *Ambrose v. Young*, 474 F.3d 1070, 1076–77 (8th Cir. 2007); *Gobert v. Caldwell*, 463 F.3d 339, 348–49 (5th Cir. 2006); *Bozeman v.*

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and Ninth Circuits have specifically denounced the approach requiring knowledge of a specific risk.¹⁰² For example, in *Gibson v. County of Washoe, Nevada*, a manic-depressive detainee suffered a heart attack and died while in custody of the county sheriff's department.¹⁰³ The detainee's widow sued the county, the sheriff, and various other officials.¹⁰⁴ The Ninth Circuit held that the defendants may be liable for the harm to a detainee even though the defendants were deliberately indifferent to the detainee's mental health and not to the specific harm suffered by the detainee—a heart attack and death.¹⁰⁵

Further, in *Gobert v. Caldwell*, after an inmate injured his leg and had surgery, the prison doctor failed to diagnose an infection in the inmate's leg.¹⁰⁶ The Fifth Circuit held that specific knowledge of an inmate's infection was not required; instead, all that was required was an “aware[ness] of a substantial risk of serious harm to [the inmate] from the nature of the wound itself.”¹⁰⁷

C. Martinez v. Beggs Changes the Deliberate Indifference Standard

By requiring that prison officials understand the specific risks faced by inmates, the Tenth Circuit changed the deliberate indifference standard established by the Supreme Court in *Farmer*.¹⁰⁸ In *Farmer*, the Court held that an “official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”¹⁰⁹ The

Orum, 422 F.3d 1265, 1272–73 (11th Cir. 2005); *Johnson v. Wright*, 412 F.3d 398, 403–04 (2d Cir. 2005); *Burrell v. Hampshire County*, 307 F.3d 1, 7–8 (1st Cir. 2002); *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1191–93 (9th Cir. 2002); *Beers-Capitol v. Whetzel*, 256 F.3d 120, 131 (3d Cir. 2001).

102. See *Dale*, 548 F.3d at 569 (holding that “[t]he precise identity of the threat . . . is irrelevant” and that “[a] prison official cannot escape liability by showing that he did not know that a plaintiff was especially likely to be assaulted by the specific prisoner”) (citation omitted); *Gobert*, 463 F.3d at 348–49; *Gibson*, 290 F.3d at 1191–93; *Beers-Capitol*, 256 F.3d at 131 (“In fact, *Farmer* anticipated that a plaintiff could make out a deliberate indifference case by showing that prison officials simply were aware of a *general* risk to inmates in the plaintiff's situation . . .”) (emphasis added).

103. *Gibson*, 290 F.3d at 1180.

104. *Id.*

105. *Id.* at 1191–93.

106. *Gobert*, 463 F.3d at 343–44.

107. *Id.* at 348–49.

108. See *supra* Part II.B.

109. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

Tenth Circuit changed the holding in *Farmer* by disregarding the requirement that officials be aware of facts from which an “inference could be drawn” about a substantial risk and replaced it with the requirement that officials must know the specific risk.

Additionally, the Tenth Circuit in *Martinez* ignored clarifying dictum in *Farmer*. The Court in *Farmer* stated that “[i]n prison-conditions cases [the] state of mind is one of ‘deliberate indifference’ to inmate health or safety.”¹¹⁰ The Court did not state that the state of mind is deliberate indifference to specific health or safety risks. Therefore, to be deliberately indifferent, an official does not need to know the specific risk; deliberate indifference only requires an official to know facts from which an inference could be drawn that a substantial risk of serious harm to an inmate’s health or safety exists.¹¹¹

The court also ignored the dictum in *Farmer* that clarified that a prison official may not “escape liability for deliberate indifference by showing that . . . he did not know the complainant was especially likely to be assaulted by the *specific* prisoner.”¹¹² The court in *Martinez* acknowledged, but it ultimately distinguished this dictum on the facts. The court reasoned that *Farmer* was a prisoner assault case, and in prisoner assault cases, the officer does not need to know the specific assailant and only needs to know about the substantial risk of assault.¹¹³ However, the *Martinez* court erred in making this distinction because factually distinguishing prisoner-assault cases from other prisoner Eighth Amendment cases is not necessary, especially since the Supreme Court did not make this distinction when it applied the holding in *Estelle*, a prisoner’s medical needs case, to *Farmer*, a prisoner-assault case.¹¹⁴

Additionally, the *Martinez* court did not justify why it could require knowledge of the specific harm faced by Ginn—the heart

110. *Id.* at 834.

111. The *Martinez* court rightly reasoned that there should be some connection between the eventual harm and the official’s knowledge, *Martinez v. Beggs*, 563 F.3d 1082, 1089 n.8 (10th Cir. 2009), but it would be erroneous to conclude that this connection requires actual knowledge of the specific risk. Instead, this connection will always be incidentally satisfied by the *Farmer* Court’s requirement that an “official must both be aware of facts from which the *inference could be drawn* that a substantial risk of serious harm exists.” *Farmer*, 511 U.S. at 834 (emphasis added).

112. *Farmer*, 511 U.S. at 843 (emphasis added).

113. *Martinez*, 563 F.3d at 1089 n.8.

114. *See supra* Part II.

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attack—instead of simply requiring general knowledge of an “excessive risk to inmate health or safety” as required in *Farmer*.¹¹⁵ Applying the *Farmer* Court’s rationale that it is obviously “irrelevant to liability that the officials could not guess beforehand precisely who would attack whom”¹¹⁶ to *Martinez* means that Ginn faced possible death, yet it is obviously irrelevant to liability to require that the officials know beforehand what specific risk would cause his death.

D. Martinez v. Beggs Unreasonably Requires that Prison Officials Understand Specific Risks

Finally, the requirement that prison officials know the specific risk facing an inmate unreasonably requires prison officials to be sufficiently knowledgeable to understand the specific risk. To illustrate, in another Tenth Circuit case, *Farhat v. Young*, an inmate asserted that prison officials were deliberately indifferent to his medical needs after the inmate suffered, in part, “pneumothoraces with subcutaneous emphysema, suspected esophageal perforation, disorientation, sepsis cultured as *Streptococcus* . . . , severe dehydration, rhabdomyolysis, renal failure, cognitive deficit . . . , and multiple organ failure syndrome.”¹¹⁷ Though the Tenth Circuit in *Farhat* did not discuss the holding in *Martinez* that prison officials must know these specific risks,¹¹⁸ if the court in *Farhat* were to apply the *Martinez* deliberate indifference standard, the prison officials in *Farhat* would have to be sufficiently knowledgeable to understand each of the above-mentioned specific medical risks. Requiring that prison officials understand specific risks is unreasonable and would place an unreasonable burden of proof on plaintiffs.

V. CONCLUSION

This Note does not argue that the outcome in *Martinez* was wrong; in fact, the outcome of the case may be correct under the deliberate indifference standard set forth in *Farmer*. However, the Tenth Circuit in *Martinez* wrongly changed the Supreme Court’s

115. *Farmer*, 511 U.S. at 838.

116. *Id.* at 843–44; *see supra* note 47 and accompanying text.

117. No. 08-6159, 2009 WL 2733228, at *2 (10th Cir. Aug. 28, 2009).

118. The court in *Farhat* discussed only qualified immunity and dismissed the case for lack of jurisdiction under the collateral order doctrine. *Id.* at *1.

deliberate indifference standard set forth in *Farmer* by requiring knowledge of specific risks. Additionally, the Tenth Circuit's holding in *Martinez* disregards prior Tenth Circuit precedent, conflicts with other circuit courts, and unreasonably requires that all prison officials be sufficiently knowledgeable to understand a detainee's specific medical risks.

The correct standard for determining Eighth Amendment violations to a pretrial detainee's rights is that "a prison official cannot be found liable . . . for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety. . . . [And that] the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."¹¹⁹ To require anything more than knowing enough to draw an inference of a substantial risk, i.e., requiring that a prison official must know the specific risks, changes the deliberate indifference standard set forth in *Farmer*.

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119. *Farmer*, 511 U.S. at 837.

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